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VALUE ADDED TAX COMMITTEE
(ARTICLE 29 OF DIRECTIVE 77/388/EEC)
WORKING DOCUMENT NO 467

MINUTES

74TH MEETING
– 29 JUNE 2004 –

4. QUESTIONS CONCERNING THE APPLICATION OF COMMUNITY VAT PROVISIONS

4.6 Origin : UK
References : Article 13 A (1) (f)
Subject : Exemptions
(Document TAXUD/1650/04 – Working paper n°450) (AB)

The **COM** introduced the working document and asked delegations to give the **UK** advice on the application of Article 13.A.1 f) which had recently received a great deal of attention mainly as a result of the Court's ruling in Case C-08/01 (Taksatorringen). That decision showed that taxable persons conducting an activity to which one of the exemptions in part B of article 13 applies, may be members of the "independent groups of persons" supplying exempt services. Tax professionals see this exemption as a tool to minimise non-deductible tax in the financial and insurance sectors.

In the Commission's view, the requirements of the exemption must be strictly met in order for the exemption to apply. Those requirements are threefold:

1. The supplier of the service is a taxable person, engaged in an economic activity, acting independently from its members.

2. The recipients must be members of the group supplying the services. This condition would exclude from the exemption those cases in which the recipient cannot be considered a member of the group. A cost sharing agreement of the type involving educational charities in the UK paper would not comply with this requirement.

3. The Directive requires that all members conduct an exempt activity or an activity in which they engage as non-taxable persons.

Only those services which are directly necessary for the exercise of the exempt activity or for the activity, in which the members engage as non-taxable persons, may benefit from the exemption.

SE underlined that the services must be directly necessary for the exercise of the activity and has included a corresponding provision in its legislation. **SE** also mentioned that it only concerned services that were normally not supplied by someone outside the group and that the rule only is applicable when the group or it's members carries out exempt activities. The services as well as the cost must be covered by a membership agreement; IT services are excluded.

ES applies the exemption for some years and has encountered several difficulties. The exemption is limited to services directly necessary and excludes cleaning services. The deductible proportion under Article 19 of the 6th Directive cannot exceed 10%. The exemption does not apply to cost sharing agreements and the recipients must be taxable persons. Overheads like cleaning and security services, as well as financial advice in relation to specific activities are definitely excluded. The distortion requirement is not applied across the board and ES is rather restrictive in applying the exemption.

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NL has not encountered too many problems and applies basically the same conditions as outlined in the working document. Case studies apply in respect of competitive distortions. The services must be directly necessary. Software and letting of staff are excluded.

PT applies the exemption since 1986 on the basis of standards corresponding to those described in the working document. In the practical application problems were encountered with financial manoeuvres (e.g.: Legal advice in buying back credits).